IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION Nos. 22142 of 2004 & 20646 of 2004

W.P.No.22142 of 2004:

Between:

N.Venkateswarlu S/o.Narayana,

Aged 38 years, Sub-Engineer (under Suspension)

Shamshabad Rural Section,
Central Power Distribution Company of A.P,Ltd, Shamshabad,
Ranga Reddy District

..... PETITIONER

AND

1 The Central Power Distribution Co.of A.P.Ltd., Divisional Engineer Rajendranagar, Ranga Reddy Dist.
2 Central Power Distribution Co A.P.Ltd., Superintending Engineer R.R.South, Hyderabad.
3 Central Power Dist Co A.P.Ltd., Asst Divisional Engineer Shamshabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ Certiorari and call for the records leading to Memo No.DEE/OP/RJNR/F.Adm/D.No.2676/04, dt 22-11-2004 of the 1st respondent and quash the same.

Counsel for the Petitioner: MR.C.S.K.V.RAMANAMURTHY

Counsel for the Respondent Nos.1 to 3: MR.S.RAVINDRANATH

W.P.No.20646 of 2004:

Between:

N.Venkateswarlu, S/o.Narayana,

Aged 38 years, Sub-Engineer,
Shamshabad Rural section & A.P. Central power

Distribution Company Ltd., Shamshabad,

Ranga Reddy Dist.

..... PETITIONER

AND

1 The Superintending Engineer, Electrical operation circle,

R.R.South, A.P.Central Power Distribution Company Ltd.,

Mint Compound, Hyderabad.

2 The Assistant Divisional Engineer, (Operations)

A.P.Central Power Distribution Company Ltd.,
Shamshabad, Ranga Reddy Dist.

3 Sri Srinivasa Rao, S/o.Not Known,

Assistant Divisional Engineer, (Operations)
A.P.Central Power Distribution Company Ltd.,

Shamshabad, Ranga Reddy Dist.
4 The Divisional Engineer, (Operations)

A.P.Central Power Distribution Company Ltd.,
Rajendranagar, Ranga Reddy Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction more particularly one in the nature of writ of Mandamus declaring the action of second Respondent in not permitting the petitioner to attend to duty from 12-10-2004 onwards, marking the days actually worked prior to 12-10-2004 as absent and not paying the salary for September 2004 and October 2004 and the inaction on the part of 1st respondent in spite of submission of written representation dated 18-10-2004, thereby denying the opportunity of public employment as arbitrary, illegal and unconstitutional and consequently direct the 1st Respondent and second Respondent to permit the petitioner to attend to normal duties and pay the salary for the period worked including September 2004 and October 2004 and continue to pay the salary for future periods of work.

Counsel for the Petitioner: MR.C.S.K.V.RAMANAMURTHY

Counsel for the Respondent Nos.1 to 4: MR.S.RAVINDRANATH

The Court made the following:

–

–

–

–

–

–

–

COMMON ORDER:

–

Writ Petition No.22142 of 2004 is filed to issue a Writ of Certiorari and call for records leading to Memo No.DEE/OP/RJNR/F.Adm/D.No.2676/04, dated 22.11.2004 of the 1st respondent and quash the same.

The brief allegations in the affidavit filed in support of the petition, for the purpose of disposal of the present writ petition, delineated as follows:

The petitioner is a regular employee from 26.07.2004 and he has been working as a Sub Engineer, Shamshabad rural section. On posting by transfer, Sri Srinivasa Rao, Assistant Divisional Engineer took charge at Shamshabad on 29.09.2004. Thereafter, the said Srinivasa Rao denied access to the petitioner to the registers and records being maintained by him as Sub Engineer. The salary of the petitioner for the month of September, 2004 was not disbursed through he worked. When he requested to disburse his salary or to spell out for withholding his salary on 12.10.2004, he got absent marked in the attendance register over his signatures from 20.09.2004 to 11.10.2004 and did not permit him to sign in the attendance register. The 3rd respondent got his table and chair removed and asked him not to attend the office. When he made complaint to the Superintending Engineer and appraised the situation, he did not take any steps and paid deaf ear. He submitted a written representation to the Superintending Engineer on 18.10.2004 narrating all the events, but there was no response. He filed W.P.No.20646 of 2004 before this Court on 08.11.2004 against the present respondents and SR ADE, which was listed for admission on 10.11.2004 and the same was adjourned to 18.11.2004 at the request of the standing Counsel for the respondents. On 13.11.2004 he received the impugned proceedings for his unauthorized absence, directing to submit explanation. He submitted his reply dated 16.11.2004 through registered post. Thereafter on 23.11.2004 he received impugned proceedings dated 05.11.2004 withholding of three annual grade increments with cumulative effect relating to charge sheet dated 31.05.2003. As the proceedings of the respondent Corporation dated 13.11.2004 were not implemented, he filed W.P.No.10864 of 2004 before this Court and the same was admitted. For imposing of penalty by the orders dated 05.11.2004 issued by the respondents, he intended to file an appeal. Thereafter

the 1st respondent issued the impugned proceedings dated 22.11.2004, placing him under suspension with *mala fide* intention to cover up the vindictive acts and humiliations meted out to him in the garb of initiation of disciplinary action. Hence the present writ petition.

The Writ Petition No.20646 of 2004 is filed seeking declaration that the action of the 2nd respondent in not permitting the petitioner to attend the duty from 12.10.2004 onwards and marking the days actually worked prior to 12.10.2004 as absent and not paying the salary for September and October, 2004, as arbitrary and illegal.

According to the petitioner, he was posted as a Sub- Engineer, Shamshabad on 26.07.2004 and continuously attending his duties without availing any leave. But he was targeted and victimized for no fault on his part. He was not paid salary for the period from 26.07.2004 to 31.07.2004. He was deputed for training programme in Hyderabad from 23.08.2004. But he was not intimated as to his deputation; therefore, he attended his normal duties on 23.08.2004 and 25.08.2004 and signed in the attendance register. An attempt was made to deduct the salary for three days on the pretext that he has been deputed to training and he did not attend for the same. He attended duties through out September, 2004, but he was not paid salary. The 3rd respondent took charge as ADE, Shamshabad on 20.09.2004 and he denied access to the petitioner to the registers being maintained by him. The

3rd respondent got removed the table and chair of the petitioner in the office and warned him not to enter into the office. He made a representation to the 1st respondent, but of no avail. Then he gave written representation to the

1st respondent on 18.10.2004. Thereafter also he was denied to enter the office from 13.10.2004 onwards.

According to the petitioner, he tried to protect the public interest by bringing to the notice of higher authorities certain fraudulent transactions and activities of some Engineers thereby causing loss of

revenue to the public corporation. All those involved in such acts, bore grudge on him, and by wielding their official power and influence, started harassing him with ultimate object of driving him out of employment and this vindictive treatment was continuing since three or four years. He was not promoted in pursuance of proceedings dated 13.11.2001, and then he filed W.P.No.10864 of 2004. He also gave written representations to the Joint Managing Director (Vigilance and Security) on 09.04.2001. With regard to certain irregularities, resulting in loss of revenue to the Corporation, disciplinary proceedings were initiated and penalty of stoppage of three annual grade increments with cumulative effect was inflicted. On appeal it was reduced to one annual increment. Though he was attending duties, the same was purposefully shown as unauthorized absence and salary was denied. He filed W.P.No.10855 of 2004 seeking direction to the respondents for payment of salary and it is pending. Hence the present writ petition is filed.

Respondents 2, 3 and 4 filed counter affidavit stating that the petitioner has been absconding from duty from 26.09.2004 and in the attendance register absent mark was noted till 30.09.2004. There upon ADE, Shamsabad checked the attendance register of Shamshabad rural section, which is under his control and for the period 01.10.2004 and 08.10.2004 he marked absent to the petitioner as he was absconding duties without any intimation. The petitioner came to the office on 11.10.2004 and signed in the attendance register from 27.09.2004 to 11.10.2004 at a time over the absent mark when ADE and AEE were on field works. The Section Officer found the same and accordingly a memo was issued to the petitioner on 12.10.2004 and it was pasted in the notice board as the petitioner did not attending the office. Memo dated 13.10.2004 was also issued, calling explanation from the petitioner for his unauthorized absence from 26.09.2004 onwards and over signing on the absent marks. Another memo dated 27.10.2004 was issued directing the petitioner to submit explanation for his unauthorized absence. As the petitioner did not attending the office since 1st

October and not collected the salary for the working period from 01.092004 to 25.09.2004, the salary was kept under the safe custody of ADE till 12.10.2004 and finally it was remitted in State Bank of India. Basing on the representation to the Superintending Engineer, report has been called for and in the meanwhile the petitioner approached this Court. Since the last pay certification was not received from his previous station by the end of 31.07.2004, his salary could not be claimed and disbursed on 01.08.2004. The salary for the above six days was claimed and prepared supplementary bill during August, 2004 and the same is ready for payment together with the salary for the month of September, 2004 payable on 01.10.2004. The petitioner did not turn up for collecting salary. The petitioner was selected for training from 23.08.2004 to 25.08.2004 and informed him to attend the training. He failed to attend the training and also not attended his regular duties and finally on 26.08.2004 he attended the office and signed in the attendance register for the above three days. He was issued casual leave for the above period and taken the salary. As the petitioner signed in the attendance register over the absent marks, to avoid tampering of the register, the same was kept under the control of the Section Officer from 12.10.2004 onwards and all the employees are used to sign except the petitioner as he was absconding from duty. As the petitioner has involved in irregularities, disciplinary proceedings were contemplated against him and therefore, his case was not considered for the post of AAE, hence the petitioner filed W.P.No.10864 of 2004. It is a fact that the petitioner made a complaint to the JMD (Vigilance and Security) A.P.Transco. Accordingly, the vigilance authorities inspected and investigated on the complaint, wherein the petitioner and the Section Officer were found guilty. Accordingly, disciplinary proceedings were initiated against the petitioner and final orders have been passed withholding of three annual grade increments with cumulative effect. When he absconded his duties while he was working in the office of ADE, a suitable action is being contemplated, for which the petitioner filed W.P.No.10855 of 2004. It is specifically stated that no one is prevented the petitioner to attend his duties from 12.10.2004

onwards, but he absconded from his duties. The Divisional Engineer, Rajendranagar was immediate Officer over the Assistant Divisional Officer and the petitioner has to approach him in case he has got any problem. The petitioner failed to approach the Divisional Engineer. Hence he prays to dismiss the petition.

The writ petitioner filed a reply affidavit to the counter of the respondents, denying all the allegations made in the counter affidavit, reiterating the fact that he attended the duties in all working days from 20.09.2004 to 11.10.2004 and signed in the attendance register on each day and the entire salary for the month of September, 2004 was not disbursed to him, hence the writ petition may be allowed.

The learned counsel appearing for the petitioner vehemently contended that the suspension order is vitiated for the reasons of *mala fides*. The respondents with a view to take vengeance against him, marked absent in the attendance register over his signature. He was not allowed to sign in the attendance register, that he was not given promotion though eligible for promotion, that he submitted a written representation to the Superintending Engineer, but no action has been taken, that as the petitioner was in the habit of bringing to the notice of higher authorities with regard to certain fraudulent transactions and activities of some Engineers who were responsible for the cause of loss of revenue of public corporation, all those involved in such acts, bore grudge against him and started harassing with ultimate object of driving him from out of employment. In the background of these aspects a legal malice can be inferred. The above justifiable cause warranting suspension pending enquiry and disciplinary action is intended to cover up the vindictive acts and humiliations meted out to the petitioner, that the 1st respondent has not taken any independent decision in placing him under suspension and the impugned order is meant to continue the chain of disciplinary proceedings in order to deprive the legitimate promotion of the petitioner. Hence, the impugned order suffers from *mala fide* action of

the respondents. Therefore, he prays to quash the proceedings.

The learned counsel for the petitioner further contended that though the petitioner has been attending duties from 12.10.2004, the 2nd respondent is not permitting him and they are not paying salary for the month of September and October, 2004. Hence he prays to give a direction as prayed for.

On the other hand, the learned counsel appearing for the respondents contended that the suspension order passed by the 1st respondent is only pending enquiry basing on serious allegations. The 1st respondent is right to place the petitioner under suspension and the authority who passed that order is not under challenge. Even the order of suspension is an appealable order as per the regulations and therefore, the writ petition is devoid of merit and the suspension order cannot be revoked in view of the serious allegations levelled against him.

With regard to the non-payment of salary, it is contended by the learned counsel for the respondents that the petitioner was not prevented to attend the duties from 12.10.2004 onwards. He absconded duties from 26.09.2004 onwards and on 11.10.2004 he attended the office and signed over the absent marks from 26.09.2004 to 11.10.2004. He also contended that the petitioner did not collect the salary for the period from 01.09.2004 to 25.09.2004, and the same was kept under safe custody. Therefore, it is not correct to say that the salary from the month of September, 2004 was not paid and there are no grounds to give any direction.

With regard to the suspension order pending enquiry, normally this Court would not interfere unless such an order is vitiated by *mala fides*. The jurisdiction of the 1st respondent in placing the petitioner under suspension is not under challenge. As seen from the impugned Memo No.DEE/OP/RJNR/F.Adm/D.No.2676/04, dated 22.11.2004, the 1st respondent considered it necessary to place the petitioner under suspension pending enquiry into the grave allegation

of unauthorized absence with effect from 26.09.2004 and tampering the attendance register by signing over the absent marks till 11.10.2004.

The case of the writ petitioner is that he was not absent to attend the duties with effect from 26.09.2004 and he did not tamper with the attendance register by signing over the absent marks. On the other hand, it is the case of the respondent that he has not been attending to the regular duties, but the writ petitioner has signed in the attendance register, and therefore, the impugned proceedings do not suffer from serious legal infirmities. There are serious disputed questions of fact, which cannot be decided by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The serious disputed questions of fact are, according to the petitioner, he attended the office from 20.09.2004 to 11.10.2004 and signed in the attendance register. He also stated that when he requested to pay salary for the month of September, 2004, the 3rd respondent got absent marked in the attendance register over his signature from 20.09.2004 to 11.10.2004 and did not permit him to sign in the attendance register, whereas according to the respondents 2 to 4, the petitioner came to the office on 11.10.2004 and signed in the attendance register from 27.09.2004 to 11.10.2004 at a time over the absent marks when ADE and AAE were on field works. Such a factual aspect cannot be decided by this Court.

The learned counsel for the petitioner placed strong reliance on a decision reported in ***N.B.Gangadarayya vs. Executive Officer, Srisailam Devasthanam*** wherein it was held:

> "A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is *mala fide* use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order.
>
> In *E.P.Rayappa vs.State of Tamil Nadu (1974 (4) SCC 3)* the Supreme Court observed that the burden of establishing *mala fides* is very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved and the very seriousness of such allegations

depends upon the proof of higher order of accountability."

For the same proposition, he also placed reliance on a decision reported in ***Parbodh Sagar vs. Punjab State Electricity Board*** wherein the Apex Court held:

> "There must be factual support pertaining to the allegations of *mala fides,* unfortunately there is none. Mere user of the word '*mala fide'* by then petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration have been noted in this judgment in extenso."

So from the above decisions, it is clear that mere assertion of word '*mala fide'* would not sufficient, but malice or *mala fides* can only be appreciated from the record of the case.

Bearing the above principle in mind, now it has to be considered whether the actions of the respondents are vindictive in nature or whether the impugned order is vitiated from any *mala fides* on the part of the 1st respondent. The affidavit filed in support of the petition does not show any malice on the part of the 1st respondent so as to pass the impugned proceedings. It does not even reveal improper motive on the part of the 1st respondent. As a matter of fact, the writ petitioner did not attribute any malice whatsoever to the 1st respondent except saying that the 1st respondent has not taken any independent decision on the suspension order. On the other hand, it is specifically alleged that it is the

3rd respondent, who did not allow him to sign in the attendance register and marked absent over his signature in the attendance register. Even according to him, the 3rd respondent by memo No.750/2004, dated 13.10.2004 stated that the writ petitioner was absconding duty from 26.09.2004.

The petitioner has no grievance in so far as the

1st respondent is concerned. Therefore, the question of

1st respondent taking vengeance against the writ petitioner in the circumstances of the case, acting with malice, does not arise. It is not the case of the writ petitioner that he made complaints to the higher authorities about the fraudulent transactions and activities of the 1st respondent for causing loss of revenue, and therefore, he entertained grudge against him.

Leading to the filing of several writ petitions by the petitioner are not on account of inaction on the part of the

1st respondent. For not giving promotion as Additional Assistant Engineer, he filed W.P.No.10864 of 2004. The

1st respondent is not the person, who has denied the promotion of the petitioner. The 1st respondent is not the person, who denied the entry of the petitioner into the office, giving cause of action to file W.P.No.10855 of 2004. The 1st respondent is not the person who has not permitted the petitioner to report duty from 26.07.2004, for which act, he constrained to file W.P.No.20264 of 2004. As a matter of fact, though the

1st respondent is superior authority, the writ petitioner did not complain about any of his grievances to him at any point of time. On the other hand, even according to the writ petitioner, he approached the Superintending Engineer three times and also made a written representation on 18.10.2004, but there is no response.

So, viewed from any angle from the narration of the afore said mentioned facts, it cannot be said that the 1st respondent acted with malice to place the writ petitioner under suspension. It is not the case of the writ petitioner that at the behest of either 2nd respondent or 3rd respondent, the impugned proceedings have been issued. The only thing stated in the affidavit filed in support of the petition that the 1st respondent has not taken any independent decision. But as seen from the impugned proceedings, as the petitioner was in unauthorized absence with effect from 26.09.2004 and tampering of attendance register by signing over the absent marks till 11.10.2004,

the 1st respondent is constrained to place the writ petitioner under suspension. So, in my considered opinion, the suspension order does not suffer from serious legal infirmities so as to call for interference by this Court.

In view of the facts and circumstances as explained by the petitioner, it is appropriate to give a direction to the 1st respondent to complete the enquiry within a reasonable time.

Accordingly, the Writ Petition No.22142 of 2004 is disposed of with a direction to the 1st respondent to complete the enquiry within a period of four months from the date of receipt of a copy of this order. The writ petitioner shall cooperate with the enquiry officer without taking unreasonable time. No order as to costs.

In respect of Writ Petition No.20646 of 2004 is concerned, with regard to first prayer in not permitting the petitioner from attending duty from 12.10.2004, it is subjudice because for the period from 12.10 2004 onwards, it is a subject matter to be enquired into by the enquiry officer. With regard to the second prayer for not paying the salary for the month of September, 2004, it is specifically stated that the petitioner not collected the salary for the period from 01.09.2004 to 25.09.2004 and after drawing the salary, the same was kept under safe custody till 12.10.2004 and later on, remitted into State Bank of India, Kattedam Branch into CPDCL. So the petitioner may be received salary for the said period.

With regard to the salary for the month of October, 2004, it is the case of the respondents that the petitioner has absconded duty from 12.10.2004. Hence this issue has to be decided in the disciplinary enquiry.

Therefore, the Writ Petition No.20646 of 2004 is partly allowed, directing the respondents to pay the salary to the petitioner for the period from 01.09.2004 to 25.09.2004. No order as to costs.

Dated: 13.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Superintending Engineer,

Electrical Operation Circle,

R.R.South, A.P.Central Power Distribution

Company Ltd., Mint Compound,

Hyderabad

2. The Assistant Divisional Engineer,

(Operations) A.P.Central Power

Distribution Company Ltd.,

Shamshabad, Ranga Reddy District

3. The Divisional Engineer,

(Operations) A.P.Central Power

Distribution Company Ltd.,

Rajendranagar, Ranga Reddy District

4. Two CD copies.